Supreme Court, U.S.
FILED

952036 JUN 17 1996

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1995

DAVID J. BONNETTE,
JUAN M. PORRAS, HENRY BRUMFIELD,
OTTIS L. ROBBINS AND JOEL THOMPSON,

Petitioners,

versus

ODECO OIL & GAS COMPANY – DRILLING DIVISION
AND ODECO DRILLING SERVICES, INC.,

Respondents.

Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

THOMAS M. DISCON,* T.A. (14219)
DISCON LAW FIRM
Two Lakeway Center, Ste. 1240
3850 N. Causeway Boulevard
Metairie, Louisiana 70002
Telephone: (504) 835-6435
Attorney for Petitioners

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

83 pp

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER IT WAS INTENDED FOR THE LIMITATION OF LIABILITY ACT TO ARROGATE CLAIMANTS' RIGHT TO PROCEED IN THE FORA OF THEIR CHOICE WITH A JURY TRIAL PURSUANT TO THE "SAVING TO SUITORS" CLAUSE WHEN THE SHIPOWNER'S RIGHTS TO LIMITATION ARE ABSOLUTELY PROTECTED BY STIPULATIONS OF THE INJURED CLAIMANTS, COMBINED WITH ENTERED ORDERS OF THE PRESIDING FEDERAL DISTRICT COURT.

II. WHETHER THE INDEMNIFICATION, CONTRIBUTION AND ATTORNEYS' FEES CLAIMANTS, SHELL OIL COMPANY, SHELL OFFSHORE, INC. AND WHITTAKER CORPORATION ARE PRESCRIBED FROM BRINGING CLAIMS IN THIS LIMITATION PROCEEDING.

III. *ODECO V. BONNETTE*, 74 F.3D 671 (5TH CIR. 1996) CONFLICTS WITH THE SECOND AND THIRD CIRCUIT COURTS OF APPEALS' DECISIONS IN *COMPLAINT OF DAMMERS & VANDERHEIDE*, 836 F.2D 750 (2ND CIR. 1988) AND *GORMAN V. CERASIA*, 2 F. 3D 519 (3RD CIR. 1993).

LIST OF PARTIES

The parties to the proceeding in the United States Court of Appeals for the Fifth Circuit were:

Odeco Oil & Gas Company – Drilling Division[1];

Odeco Drilling Services, Inc.[1];

David J. Bonnette;

Leslie G. Bonnette;

Juan Porras;

Maggie Porras;

Henry Brumfield;

Ottis L. Robbins;

Cathy Ann Robbins;

Joel Thompson; and

Janet Franzine Thompson.

---

[1] Odeco Oil & Gas Company – Drilling Division and Odeco Drilling Services, Inc. were, until February, 1992, wholly owned subsidiaries of Murphy Exploration & Production Company. On February 3, 1992, the assets of those companies were sold to Diamond M Corporation. (Hereinafter referred to as "Odeco").

TABLE OF CONTENTS

Page

Questions Presented for Review i

List of Parties ii

Table of Contents iii

Table of Authorities v

Opinions, Judgments and Orders Below 1

Jurisdiction 1

Statutory Provisions 2

Statement of the Case 2

Reasons for Granting Certiorari 6

I. IT WAS NOT INTENDED FOR THE LIMITATION OF LIABILITY ACT TO BE AN OFFENSIVE WEAPON BY WHICH THE SHIPOWNER CAN DEPRIVE SUITORS OF THEIR COMMON-LAW RIGHTS UNDER THE "SAVINGS TO SUITORS" CLAUSE 6

II. THE INDEMNIFICATION, CONTRIBUTION AND ATTORNEYS' FEES CLAIMANTS, SHELL OIL COMPANY, SHELL OFFSHORE, INC. AND WHITTAKER CORPORATION ARE PRESCRIBED FROM BRINGING CLAIMS IN THIS LIMITATION PROCEEDING 16

III. *ODECO V. BONNETTE*, 74 F.3D 671 (5TH CIR. 1996) CONFLICTS WITH THE SECOND AND THIRD CIRCUIT COURTS OF APPEALS' DECISIONS IN *COMPLAINT OF DAMMERS & VANDERHEIDE*, 836 F.2D 750 (2ND CIR. 1988) AND *GORMAN V. CERASIA*, 2 F.3D 519 (3RD CIR. 1993) 19

TABLE OF CONTENTS – Continued

Page

Conclusion 19

Appendix A .....App. 1

Appendix B .....App. 10

Appendix C .....App. 24

Appendix D .....App. 35

Appendix E .....App. 45

Appendix F .....App. 48

TABLE OF AUTHORITIES

Page

CASES

Complaint of Dammers & Vanderheide, 836 F.2d 750 (2nd Cir. 1988) 7, 12, 13, 15, 19

Gorman v. Cerasia, 2 F.3d 519 (3rd Cir. 1993).. 13, 15, 19

In re MR. WAYNE, 729 F.Supp. 1124 (E.D. La. 1989) 7

Kattelman v. Otis Engineering Corp., 701 F.Supp. 560 (E.D. La. 1988) 7, 12

Lake Tankers Corp. v. Henn, 354 U.S. 147, 77 S.Ct. 1269 (1957) 7, 8, 16, 20

Lloyd's Leasing Ltd. v. Bates, 902 F.2d 368 (5th Cir. 1990) 17

Matter of Cooper/T. Smith Stevedoring Co., 735 F.Supp. 689 (E.D. La. 1990) 7

Odeco v. Bonnette, 4 F.3d 401 (5th Cir. 1993) 4, 11, 15, 17, 18

Odeco v. Bonnette, 74 F.3d 671 (5th Cir. 1996) .. 6, 12, 14

Rowan Cos., Inc. v. Griffin, 876 F.2d 26 (5th Cir. 1989) 3

STATUTES

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1333 2

28 U.S.C. § 1333(1) 3, 14

33 U.S.C. § 905(b) 3

46 U.S.C. §§ 182-189 8

46 U.S.C. §§ 183, 185 2

TABLE OF AUTHORITIES – Continued

Page

46 U.S.C. 688 3

Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims 2

Federal Rule of Civil Procedure FRCP 58 4

PETITION FOR WRIT OF CERTIORARI

David J. Bonnette, Juan M. Porras, Henry Brumfield, Ottis L. Robbins, and Joel Thompson, petitioners, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on February 14, 1996.

OPINIONS, JUDGMENTS AND ORDERS BELOW

The opinions, judgments and orders below are contained in the appendices to the Petition. Appendix "A" is the decision of the Court of Appeals for the Fifth Circuit rendered on October 14, 1993 (*Odeco v. Bonnette*, 4 F.3d 401 (5th Cir. 1993)). Appendix "B" is the Order and Reasons of the United States District Court for the Eastern District of Louisiana dated October 5, 1994. Appendix "C" is the Order of the United States District Court for the Eastern District of Louisiana dated December 16, 1994, and Second Amended Stipulation dated December 15, 1994. Appendix "D" is the decision of the Court of Appeals for the Fifth Circuit rendered on February 14, 1996 (*Odeco v. Bonnette*, 74 F.3d 671 (5th Cir. 1996)). Appendix "E" is the denial by the Court of Appeals for the Fifth Circuit of petitioners' Petition for Rehearing and Petition for Rehearing En Banc dated March 21, 1996.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on February 14, 1996,

and Petitions for Rehearing and Rehearing En Banc were denied on March 21, 1996. This Court has jurisdiction to review the decision of the Court of Appeals pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

The following statutes, set forth in Appendix "F", are involved in this case: 28 U.S.C § 1333, 46 U.S.C. §§ 183, 185, and Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims.

STATEMENT OF THE CASE

This action arises out of serious personal injuries sustained by five Odeco employees on June 2, 1991 (hereinafter referred to as "injured claimants"). On that date, the five Odeco employees were injured in an accident on a Shell Offshore, Inc. platform on the Outer Continental Shelf adjacent to the coast of Louisiana. Petitioners were injured during a safety drill when the escape capsule vessel which they entered free-fell as it was being launched into the water. The injured claimants sustained severe spinal injuries, all requiring surgery, with one ending up a paraplegic.

On January 3, 1992, Odeco filed an Action for Declaratory Judgment or Alternatively, a Complaint for Exoneration From or Limitation of Liability in the United States District Court, Eastern District of Louisiana. In the limitation proceeding, the District Court entered an

Order on January 6, 1992 restraining any further litigation against Odeco arising out of this casualty and requiring that all claims against Odeco be filed in the limitation proceeding by February 10, 1992.

All the injured claimants herein filed answers to Odeco's pleadings and filed their respective claims in the limitation action. The five injured claimants reserved their rights to pursue their claims pursuant to the "Saving to Suitors" clause in state court in their responses to Odeco's pleadings. *28 U.S.C. § 1333(1).* In the claims filed, claimants sought damages from Odeco for negligence under *33 U.S.C. 905(b)* of the Longshore and Harbor Worker's Compensation Act and the General Maritime Law. One claimant sought damages from Odeco under the Jones Act, *46 U.S.C. 688*, and General Maritime Law.

Shortly thereafter, claimants, Brumfield, Bonnette, Thompson and Robbins, filed suit in the District Court of Cameron County, Texas, 103rd Judicial District. Named in the Texas suit as defendants were Shell Offshore, Inc., Shell Oil Company, Whittaker Corporation – Survival Systems Division and Juan Porras; Porras, in turn, filed a cross-claim against the defendants. Thereafter, all claimants, Bonnette, Brumfield, Thompson, Robbins and Porras, filed a Motion to Dismiss Odeco's Declaratory Judgment Action pursuant to the factors in *Rowan Cos., Inc. v. Griffin*, 876 F.2d, 26, 30 (5th Cir. 1989). In addition, claimants requested that the restraining order entered in the limitation action be lifted to permit claimants to pursue their claims pursuant to the "Saving to Suitors" clause in state court with a jury, and for a stay of the limitation action pending the outcome of the state court action.

Shortly thereafter, the Texas defendants, excepting Juan Porras, removed the state suit to the United States District Court for the Southern District of Texas, Brownsville Division, No. 92-CV-85. All plaintiffs in the Texas suit and Juan Porras moved to remand the suit to the state court. Since the decision of *Odeco v. Bonnette*, 4 F.3d 401 (5th Cir. 1993) (hereinafter referred to as "Bonnette I"), the United States District Court for the Southern District of Texas, Brownsville Division, granted injured claimants herein, plaintiffs in Brownsville, their motion to remand the entire action to the District Court of Cameron County, Texas, 103rd Judicial District, for trial by jury.

Claimants' motions in this case were ultimately granted by the Court below on August 17, 1992, and reasons were filed on August 19, 1992. A final judgment was entered in accordance with Federal Rule of Civil Procedure FRCP 58 on September 3, 1992. Odeco then appealed to the Fifth Circuit Court of Appeals. The United States Court of Appeals for the Fifth Circuit upheld the decision of the District Court dismissing Odeco's Declaratory Action. While the Court vacated the Order lifting the restraining order in the limitation proceeding and remanded the case for the District Court only to consider the possible ramifications of potential contribution or indemnity claims that might be asserted against Odeco by the defendants, Shell Offshore, Inc., Shell Oil Company, and Whittaker Corporation, in the pending Texas State Court action, its ruling was clear that the District Court must accede to the choice of fora of claimants so long as their stipulations fully protect Odeco's right to limit liability and claimants agree to

abide by an admiralty court's determination as to Odeco's right to limit.

Petitioner then sought a Rehearing En Banc which was denied by the Fifth Circuit Court of Appeals. Petitioner then sought Writ of Certiorari to the United States Supreme Court which was also refused.

On remand, the District Court concluded that claimants for indemnity and contribution constituted "multiple claimants". Subsequent to this ruling, Shell Oil Company, Shell Offshore, Inc. and Whittaker Corporation (hereinafter referred to as Shell and Whittaker) filed their respective claims in the limitation action. The injured claimants opposed the request for leave to file claims in the limitation proceeding for indemnification, contribution and attorneys' fees by Shell and Whittaker. However, the District Court granted Shell and Whittaker leave to file their respective claims in the limitation action despite that the deadline for filing claims in the limitation proceeding expired as of February 10, 1992.

Even though Shell and Whittaker were allowed to file their respective claims for contribution, indemnification and attorneys' fees in the limitation proceeding, the District Court lifted the limitation stay while still effectively protecting the limitation of liability interest of Odeco. The District Court by Order dated December 16, 1994 accepted a "Second Amended Stipulation" furnished by the injured claimants and lifted the restraining order. Following the lifting of the restraining order, the injured claimants obtained a trial date in the Texas State Court to proceed to trial as to all parties, including Odeco, with a jury, for the fall of 1995. Meanwhile, Odeco filed a Notice

of Appeal to this Court and moved to stay the lifting of the restraining order pending appeal. The District Court subsequently granted said motion to stay the lifting of the restraining order pending appeal by Odeco.

The Fifth Circuit Court of Appeals issued *Odeco v. Bonnette*, 74 F.3d 671 (5th Cir. 1996) on February 14, 1996 (hereinafter referred to as "Bonnette II"). Injured claimants obtained an extension of time to file Request for Rehearing and Rehearing En Banc up and until and including, March 6, 1996. Requests for Rehearing and Rehearing En Banc were filed by injured claimants on March 6, 1996. The requests for rehearing were denied on March 21, 1996.

REASONS FOR GRANTING CERTIORARI

I.

IT WAS NOT INTENDED FOR THE LIMITATION OF LIABILITY ACT TO BE AN OFFENSIVE WEAPON BY WHICH THE SHIPOWNER CAN DEPRIVE SUITORS OF THEIR COMMON-LAW RIGHTS UNDER THE "SAVING TO SUITORS" CLAUSE.

This case involves the recurrent conflict between claimants' "Saving to Suitors" right and a vessel owner's statutory right to have all the matters of limitation of liability decided in a single federal court. Complainant in limitation is attempting to transform the Limitation of Liability Act[2] from a protective instrument to an offensive

[2] 46 U.S.C. § 181 *et seq.*, hereinafter referred to as the "Limitation Act".

weapon by which the shipowner can deprive suitors of their common-law rights. On the other hand, injured claimants herein are attempting to pursue their claims within their rights as a matter of law pursuant to the "Saving to Suitors" clause, while at the same time preserving the rights of complainant in his claim for limitation of liability. *Lake Tankers Corp. v. Henn*, 354 U.S. 147 (1957) mandates that injured claimants be allowed to have their claims tried by jury pursuant to the "Saving to Suitors" clause.

Two scenarios have been recognized in which the vessel owner's right to a federal forum in a limitation proceeding must give way to a claimant's right under the "Saving to Suitors" clause. The first occurs when a single claim exceeds the limitation fund, but the claimant concedes the admiralty court's exclusive jurisdiction to determine all issues relating to limitation of liability. The other occurs when the total of the claims in a multiple claim situation does not exceed the amount or value of the limitation of liability fund. If either of these situations exists, the federal court must allow the state court proceeding to resume. *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 150-54, 77 S.Ct. 1269, 1271-73 (1957); *Complaint of Dammers & Vanderheide*, 836 F.2d 750, 754-60 (2d Cir. 1988); *Kattelman v. Otis Engineering Corp.*, 701 F.Supp. 560, 562-65 (E.D. La. 1988); *In re MR. WAYNE*, 729 F.Supp. 1124, 1127-29 (E.D. La. 1989); *Matter of Cooper/T. Smith Stevedoring Co.*, 735 F.Supp 689, 690-91 (E.D. La. 1990).

Claimants' action in Cameron County Texas State Court against complainant in limitation involves multiple claims which exceed the purported value of the limitation

fund involved herein. Given the multiple claims situation, without more, the District Court would be compelled to enjoin the state court proceeding and order claimants to proceed in federal court within the limitation action. However, injured claimants herein entered stipulations in the District Court that brought them within the exceptions to exclusive federal jurisdiction as recognized in *Lake Tankers Corp. v. Henn*, 354 U.S. 147 (1957).

On December 16, 1994, the District Court approved the Second Amended Stipulation protecting complainant's right to limitation of liability. The Second Amended Stipulation stated:

> 1. The claimants/defendants, David J. Bonnette, Juan M. Porras, Ottis L. Robbins, Joel Thompson, their spouses, and Henry Brumfield hereby stipulate and agree that said claimants/defendants in the limitation proceeding shall bring all possible claims and causes of action against complainants in limitation, ODECO Oil and Gas Company – Drilling Division and ODECO Drilling Services, Inc. in the same court.
>
> 2. Claimants/defendants, David J. Bonnette, Juan M. Porras, Ottis L. Robbins, Joel Thompson, their spouses, and Henry Brumfield hereby concede that complainants, ODECO Oil and Gas Company – Drilling Division and ODECO Drilling Services, Inc., (hereinafter referred to as ODECO), are entitled to and have the right to litigate all issues relating to limitation of liability pursuant to the provisions of 46 U.S.C., § 182-189, in this court, but claimants specifically reserve the right to deny and contest

in this court all assertions and allegations made by ODECO in the complaint for limitation filed herein.

3. Claimants/defendants herein will not seek in action pending in the 103rd Judicial District Court of Cameron County, Texas, in which a jury trial has been demanded, any judgment or ruling on the issue of ODECO'S right to limitation of liability; and hereby consents to waive any claim of *res judicata* relevant to the issue of limitation of liability based on any judgment that may be rendered in said state court action.

4. Claimants/defendants herein, while not stipulating to or agreeing to $30,000.00 as the value of complainant's interest in the "Whittaker Capsule No. 1" and her pending freight, hereby stipulate that in the event that there is a judgment or recovery in the state court action in excess of $30,000.00, whether against ODECO, or any other liable party or parties who may make cross-claim or claims over against ODECO, in no event will claimants herein, separately or together, seek to execute or enforce said excess judgment or recovery insofar as same may expose ODECO to liability in excess of $30,000.00 pending the adjudication of the Complaint of Limitation of Liability in this court.

5. Claimants/defendants herein stipulate and agree that if ODECO is held responsible for attorney's fees and costs, which may be assessed against it by a co-liable defendant or a party seeking indemnification for attorney's fees and costs, then such claim shall

have priority over the claim of claimants/ defendants herein.

6. The claims and causes of action asserted by the injured claimants herein, David Bonnette, Juan Porras, Henry Brumfield, Ottis Robbins and Joel Thompson have irrevocable priority over the claims and causes of action of any and all spouses.

7. Claimants/defendants herein acknowledge Odeco's contractual rights to applicable insurance policy(ies) herein and give priority to Odeco as to their contractual rights herein.

8. Attached hereto and made a part hereof as Exhibits "1", "2", "3", "4", and "5" respectively, are the verifications and adoptions of the Second Amending Stipulation by all injured claimants/defendants in the Limitation Proceeding.

In addition to the above referenced stipulation, the district court on October 5, 1994 issued the followings Orders:

1. **IT IS ORDERED** that upon injured claimants filing of an appropriate stipulation addressing their spouses' claims, the restraining order staying the prosecution of claims against Odeco is **PARTIALLY LIFTED** in regard to the following claims: the claims of the injured claimants against Odeco, the claims of Whittaker against Odeco for contribution, and the claims of Shell against Odeco for legal and/or contractual indemnity or contribution.

2. **IT IS FURTHER ORDERED** that neither Shell nor Whittaker may utilize issue preclusion to prevent Odeco from seeking limitation.

3. **IT IS FURTHER ORDERED** that the restraining order staying the prosecution of claims against Odeco is **MAINTAINED** in regard to the claim of Shell against Odeco for defense indemnity, including but not limited to attorneys' fees and costs.

4. **IT IS FURTHER ORDERED** that this Court **RETAINS JURISDICTION** over the limitation proceeding and **MAINTAINS** the stay against entry of any judgment or enforcement of any recovery in the state-court action pending the outcome of the limitation proceeding.

5. **IT IS FURTHER ORDERED** that this limitation action is administratively stayed, pending resolution of the injured claimants' action for tort damages in state court, reserving to the parties the right to file a motion to reopen this matter as required.

The issue before This Honorable Court is whether the injured claimants in this limitation action have protected complainant's right of limitation of liability without any indemnity and contribution claimants, in particular, Shell and Whittaker, joining in with the injured claimants in the Second Amended Stipulation. Following the Fifth Circuit's decision in *Bonnette I*, the District Court allowed Shell and Whittaker to file claims for indemnification, contribution, and attorneys' fees into the limitation action involved herein. The District Court allowed this despite the opposition of injured claimants based upon prejudice.

The district court agreed with the injured claimants and their Second Amending Stipulation lifting the restraining order in the limitation proceeding to allow the injured claimants to pursue their rights under the "Saving to Suitors" clause in Texas State Court. The Fifth Circuit Court of Appeals disagreed with the district court, vacating the district court's ruling in *Bonnette II*.

The injured claimants and the district court have exceeded the requisite in protecting complainant's right under the Limitation Act. *The injured claimants stipulated that they will not enforce any judgment against Odeco or any other party making claims against Odeco in the state action (Shell and Whittaker) that would expose Odeco to liability in excess of $30,000.00 (complainants' alleged value of the vessel) pending adjudication of this case.* This stipulation, along with the others referenced herein, have been recognized as adequately protecting the complainant in limitation, Odeco, from any claims of contribution, indemnity or attorneys' fees, such as those made by Shell and Whittaker. *Complaint of Dammers & Vanderheide*, 836 F.2d 750 (2d Cir. 1988) and *Kattelman v. Otis Engineering Corp.*, 701 F. Supp 560 (E.D. La. 1988).

The District Court has even gone further than injured claimants in the Second Amended Stipulations to protect Odeco from indemnification, contribution, and attorneys' fees claims. The District Court ordered "that the Court **RETAINS JURISDICTION** over the limitation proceeding and **MAINTAINS** the stay against entry of any judgment or enforcement of any recovery in the state-court action pending the outcome of the Limitation proceeding". No judgment, whether it be for liability, damages, indemnification, contribution, attorneys' fees, or any

other possible issue, can be enforced in any manner whatsoever until the District Court entertains and decides the limitation claim of Odeco. The District Court followed the procedures outlined in *Complaint of Dammers & Vanderheide*, 836 F.2d 750 (2nd Cir. 1988) and *Gorman v. Cerasia*, 2 F.3d 519 (3rd Cir. 1993) which would allow claimants to pursue their common law remedies under the "Saving to Suitors" clause despite refusal by indemnification and contribution claimants to agree to appropriate stipulations protecting the shipowner's limitation rights.

The injured claimants stipulated to not utilizing issue preclusion to prevent Odeco from seeking limitation. Since Shell and Whittaker would not join in the Second Amended Stipulation, the District Court ordered "that neither Shell nor Whittaker may utilize issue preclusion to prevent Odeco from seeking limitation". Any findings impacting the issue of limitation are not enforceable, nor are they subject to issue preclusion in the Federal Court.

Perhaps the most insightful way to get to the heart of this case is to consider what would happen if the contribution and indemnity claimants (Shell and Whittaker) did join in the Second Amended Stipulation, then would the injured claimants be allowed to proceed with their claims in the Texas State Court. Obviously, the answer would be "yes". What is interesting is that the *exact same protection to Odeco afforded by the Second Amended Stipulation of injured claimants, combined with the Order of the District Court, would be afforded Odeco with respect to its limitation rights compared to if Shell and Whittaker had joined in the Second Amended Stipulation with the injured claimants.* In this case, it is not just the injured claimants protecting

Odeco's limitation interests, but also the District Court adding additional protection by Court Order since Shell and Whittaker also wish to prevent injured claimants from having their claims tried by jury in state court pursuant to the "Saving to Suitors" clause. *28 U.S.C. § 1333(1).*

Furthermore, the Fifth Circuit Court of Appeals stated in *Bonnette II* that "The amount of Odeco's liability to Shell is governed not only by the amount the injured claimants recover, but also by an agreement between the defendants which specifies how liability, defense costs, and other losses will be shared." However, the Fifth Circuit Court of Appeals failed to realize that the above-referenced claims are unenforceable by any party until the District Court, pursuant to its own Order, considers and decides Odeco's limitation action. Further, claims for attorneys' fees are stayed until the limitation issue is decided.

If for some reason any claim impacted Odeco's right to limitation, which is very unlikely since limitation issues are "privity and knowledge" of Odeco and "valuation" of the vessel, then the District Court retains authority by stipulation and court order to rule upon said issues since res judicata cannot apply to said issue. Furthermore, at any time should any state court ruling affect Odeco's right of limitation, then Odeco has the right to seek a stay of the state court from the District Court herein.

Indemnity, contribution, liability, damages, defense costs, and attorneys' fees have nothing to do with whether Odeco can limit its liability. If it can limit, then *all* claimants, injured, indemnification, contribution or otherwise, are precluded from recovering greater than the value of the vessel. At the time the District Court rules on the issue of limitation,

the Court will also rule on what judgments are enforceable against Odeco. Odeco could not possibly be more protected, even if Shell and Whittaker had joined in the Second Amended Stipulations of the injured claimants.

The District Court has the authority to issue orders restraining Whittaker and Shell from pursuing claims or enforcing judgments in state court to protect Odeco's right of limitation. *Complaint of Dammers & Vanderheide*, 836 F.2d 750 (2nd Cir. 1988) and *Gorman v. Cerasia*, 2 F.3d 519 (3rd Cir. 1993). The District Court has more than adequately protected Odeco in this matter. The Fifth Circuit Court of Appeals stated in *Bonnette I* that "As long as the admiralty court can effectively ensure that a shipowner will not face liability in excess of the limitation fund, it must take *all* steps necessary to assume that claimants are allowed to pursue their common law remedies in accordance with the "Saving to Suitors" clause. Injured claimants and the District Court have successfully done this. The District Court *only* lifted the stay for the injured claimants to try their case, along with the indemnification and contribution claims in state court. Nothing can be enforced. All state court decisions must await the District Court's outcome in the limitation action. Odeco is more than adequately protected. They could not be protected more, even if Shell and Whittaker had joined in the Second Amended Stipulations of the injured claimants.

The Fifth Circuit Court of Appeals held in *Bonnette II* that injured claimants *can never* pursue their rights pursuant to the "Saving to Suitors" clause when an indemnification or contribution claimant in limitation refuses to join in a stipulation to protect the shipowner. Being that

all indemnity and contribution claimants are usually defendants with claims against them by injured claimants, injured claimants involved in a limitation case will never be able to pursue their "Saving to Suitors" clause rights in state court. Such a holding is unfair and unconscionable when the injured claimants and District Court, such as in this case, protect the shipowner, Odeco, the same, if not more so, as if a stipulation were in place signed by *all* claimants, including Whittaker and Shell. This Honorable Court explained in *Lake Tankers Corp. v. Henn*, 354 U.S. 147 (1957) that liability may and should be limited consistent with preserving the claimants' right to proceed in the fora of their choice. Injured claimants should be allowed to proceed in state court. The decision of the Fifth Circuit Court of Appeals in *Bonnette II* should be vacated and reversed and the District Court's decision should be reinstated in this matter.

II.

THE INDEMNIFICATION AND CONTRIBUTION CLAIMANTS, SHELL AND WHITTAKER, ARE PRESCRIBED FROM BRINGING CLAIMS IN THIS LIMITATION PROCEEDING.

When Odeco filed its limitation action in this matter, a time deadline was scheduled by the District Court pursuant to the Federal Rules of Civil Procedure F, 4 & 5. The deadline for filing claims in the limitation proceeding was set as February 10, 1992. Shell and Whittaker did not file claims in the limitation proceeding, even after suits and claims were asserted by the injured claimants against Shell and Whittaker in the separate action which is pending in Cameron County Texas State Court. That action

against Shell and Whittaker, which arises out of the facts before this Court in this limitation proceeding, was filed on April 29, 1992.

It is within the District Court's sound discretion to prohibit claimants from filing in a limitation action after the time deadline has passed. *Lloyd's Leasing Ltd. v. Bates*, 902 F.2d 368 (5th Cir. 1990). In the *Lloyd's Leasing* case the trial court did not abuse its discretion in prohibiting an English speaking fisherman from filing a late claim in a liability limitation proceeding relating to damage caused by an oil spill. The procedures regarding publication of notice of the case had been complied with and the fisherman was associated with the commercial industry that had *"no excuse"* for not knowing about the case and filing a timely claim. This is the exact situation that is presently before this Court. Shell and Whittaker failed to file limitation claims in a timely manner for over a two year and five month time period. This occurred even though Shell and Whittaker were fully aware of the limitation proceeding. The limitation proceeding was argued and discussed within the Cameron County action filed against Shell and Whittaker. Copies of limitation pleadings went to Shell and Whittaker. Even the Fifth Circuit Court of Appeals rendered a published opinion (*Bonnette I*) raising the issue of claims for indemnification and contribution having to be considered in this case. Yet, even after the *Bonnette I* decision, Shell and Whittaker failed to file claims until prompted by the District Court in the Court's Order dated July 13, 1994 allowing said claimants to file suit for indemnification and contribution against Odeco. The law, as stated in *Lloyd's Leasing*, requires a showing of good cause for leave to be granted to the indemnification

and contribution claimants, Shell and Whittaker. Claimants have been to the Fifth Circuit Court of Appeals twice; claimants are now before This Honorable Court on a second occasion; and the injured claimants' suit is still pending in Cameron County, Texas. Shell and Whittaker cannot show any good cause for filing their claims in limitation two and one-half years late. Without the indemnification and contribution claimants, the injured claimants would have already had their case heard in Texas State Court pursuant to the "Saving to Suitors" clause. The injured claimants have been prejudiced by Shell and Whittaker not filing claims timely in this limitation proceeding. The only present reason for claimants not having this case heard in Texas State Court yet is due to the late indemnification and contribution claims of Shell and Whittaker, which is obvious from *Bonnette I* and *Bonnette II*. Any and all prejudice to the injured claimants herein results from these late filings by Shell and Whittaker in the limitation proceeding. Shell and Whittaker are late with their claims, cannot furnish any good cause excuse for filing late, and prejudice the injured claimants at this time from having their claims heard in Texas State Court pursuant to the "Saving to Suitors" clause.

It is horrifyingly unfair to the injured claimants to allow Shell and Whittaker at this point to file prescribed limitation claims. It has been over five years since the accident. Except for the Fifth Circuit Court of Appeals' concern for indemnification and contribution claims, which are prescribed, the injured claimants, after being before the District Court herein, the Fifth Circuit Court of Appeals, the United States Supreme Court and the Federal District Court in Brownsville, Texas, would have had

their claims heard in Texas State Court pursuant to the "Saving to Suitors" clause. The injured claimants are prejudiced by the late filing of Shell and Whittaker and have been unfairly delayed in seeking civil redress. Shell and Whittaker cannot even show good cause. If prescribed, then the only claimants in the limitation action would be the injured claimants. The injured claimants must be allowed to proceed in state court pursuant to the "Saving to Suitors" clause with a jury trial.

III.

ODECO V. BONNETTE, 74 F.3D 671 (5TH CIR. 1996) CONFLICTS WITH THE SECOND AND THIRD CIRCUIT COURTS OF APPEALS' DECISIONS IN *COMPLAINT OF DAMMERS & VANDERHEIDE*, 836 F.2D 750 (2ND CIR. 1988) AND *GORMAN V. CERASIA*, 2 F.3D 519 (3RD CIR. 1993).

Bonnette II conflicts with the Second and Third Circuit Court of Appeals' decision in *Complaint of Dammers & Vanderheide*, 836 F.2d 750 (2nd Cir. 1988) and *Gorman v. Cerasia*, 2 F.3d 519 (3rd Cir. 1993).

CONCLUSION

The District Court allowed suitors their rights under the "Saving to Suitors" clause and protected complainant in limitation at the same time. This is all the injured claimants seek to do. Injured claimants do not wish to negatively impact the rights of Odeco under the Limitation of Liability Act while pursuing their "Saving to Suitors" rights. The Second Amended Stipulations of

injured claimants and Orders of the District Court accomplish the goal set out in *Lake Tankers Corp. v. Henn*, 354 U.S. 147 (1957) by this Honorable Court. *Bonnette II* must be vacated or reversed. Further, the limitation claims of Shell and Whittaker are prescribed and should be disallowed, leaving only the injured claimants in the limitation action free to pursue their "Saving to Suitors" rights.

Respectfully submitted,

DISCON LAW FIRM
THOMAS M. DISCON,* T.A. (14219)
Two Lakeway Center
3850 N. Causeway Boulevard
Suite 1240
Metairie, Louisiana 70002
Telephone: (504) 835-6435
Attorney for Respondents

*Counsel of Record

Table of Contents

Appendix A	Decision of the Court of Appeals for the Fifth Circuit rendered on October 14, 1993 (Bonnette 1)	App. 1
Appendix B	Order and Reasons of the United States District Court for the Eastern District of Louisiana dated October 5, 1994	App. 10
Appendix C	Order of the United States District Court for the Eastern District of Louisiana dated December 16, 1994, and Second Amended Stipulation dated December 15, 1994	App. 24
Appendix D	Decision of the Court of Appeals for the Fifth Circuit rendered on February 14, 1996 (Bonnette 2)	App. 35
Appendix E	Denial by the Court of Appeals for the Fifth Circuit of Petitioners' Petition for Rehearing and Petition for Rehearing En Banc dated March 21, 1996	App. 45
Appendix F	Statutes	App. 48

APPENDIX A

ODECO OIL AND GAS COMPANY, DRILLING DIVISION and Odeco Drilling Services, Inc., Plaintiffs-Appellants,

v.

David J. BONNETTE, et al., Defendants-Appellees.

No. 92-3776.

United States Court of Appeals,

Fifth Circuit.

Oct. 14, 1993.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before JOHNSON, JOLLY, and JONES, Circuit Judges.

EDITH H. JONES, Circuit Judge:

Odeco Oil & Gas Company and Odeco Drilling Services, Inc. (Odeco) appeal the dismissal of their declaratory judgment action and the lifting of the stay in a limitation of liability proceeding. Upon review, we find that the district court did not abuse its discretion in dismissing the declaratory judgment, but it must reconsider one facet of the lifting of the stay.

I.

On June 2, 1991, Odeco was conducting safety drills on a fixed platform in the Gulf of Mexico off the coast of

Louisiana. Five members of the platform's crew, David J. Bonnette, Juan M. Porras, Henry Brumfield, Ottis L. Robbins, and Joe Thompson (the Crew), boarded an escape capsule suspended 90 feet above the Gulf. Someone in the capsule pulled the wrong lever, releasing the capsule from the cable that supported it, and the capsule and its passengers plunged 90 feet into the ocean, severely injuring all of them. Odeco immediately began paying workers' compensation under the Longshore and Harbor Worker's Compensation Act (LHWCA).

Fearing the possibility of multiple vessel negligence claims under section 905(b) of the LHWCA,[1] Odeco filed a declaratory judgment action on January 3, 1992 requesting that the court determine:

(1) that the escape capsule is not a vessel under section 905(b) of the LHWCA;

(2) that the injuries were not caused by vessel negligence; and

(3) that any action for damages is barred by section 905(a) of the LHWCA.

---

[1] Such claims are in certain instances permissible against the employer qua vessel, even when the employer has paid workers' compensation under the LHWCA. *See Smith v. M/V Captain Fred*, 546 F.2d 119, 122-23 (5th Cir.1977). We do not, however, decide the difficult questions posed by this case, such as whether the escape pod was a § 905(b) "vessel" or whether there was "vessel negligence".

Alternatively, Odeco sought to limit its liability to $30,000, the alleged value of the capsule, pursuant to the Limitation of Liability Act, 46 U.S.C. App. § 183 *et seq.*[2]

On January 6, 1992, the district court issued an order staying any further litigation against Odeco arising out of the accident until the determination of the limitation of liability proceeding. The order further required the injured employees to file all of their claims against Odeco in the limitation proceeding.

Four of the injured men, Brumfield, Bonnette, Thompson, and Robbins, then filed a personal injury suit in Cameron County, Texas on April 29, 1992 naming Shell

---

[2] Both the declaratory judgment action and the limitation proceeding were based on admiralty jurisdiction. The district court did not examine the basis of its subject matter jurisdiction, but this court must do so when it appears at all questionable. *See Giannakos v. M/V Bravo Trader*, 762 F.2d 1295, 1297 (5th Cir.1985) ("United States District Courts and Courts of Appeals have the responsibility to consider the question of subject matter jurisdiction sua sponte if it is not raised by the parties and to dismiss any action if such jurisdiction is lacking."). Despite troubling language in *Sisson v. Ruby*, 497 U.S. 358, 364-65, 110 S.Ct. 2892, 2897, 111 L.Ed.2d 292 (1990) (requiring courts to "focus on the general character of the activity" when determining whether a substantial relationship exists between the activity giving rise to the incident and traditional maritime activity), and *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 255-56, 93 S.Ct. 493, 498, 34 L.Ed.2d 454 (1972) (offering hypothetical situations factually similar to this case that might not satisfy the "significant relationship" test), we think the nature of the man-overboard drill at issue in this case is sufficiently salty to sustain admiralty jurisdiction, at least for purposes of the preliminary matters decided by the district court.

Offshore, Inc., Shell Oil Company, Whittaker Corporation, and Juan M. Porras as defendants.[3] Porras, in turn, filed cross-claims against the other defendants.[4] Porras and the four plaintiffs in the Texas court filed a motion in the federal district court seeking to dismiss Odeco's declaratory judgment action and to lift the stay preventing litigation against Odeco. The district court granted that motion, dismissing the declaratory judgment action and lifting the limitation stay to allow the Crew to litigate their claims against Odeco in the forum of their choice before returning to the district court for the limitation of liability proceeding within its exclusive jurisdiction.

II.

The Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* (1988), provides that a court "may declare the rights and other legal relations of any interested party seeking such declaration." *Id.* at § 2201. It is well established in this circuit that a court need not provide declaratory judgment relief on request, as this is a matter left to the district court's sound discretion. *See, e.g., Rowan Companies, Inc. v. Griffin,* 876 F.2d 26, 28 (5th Cir.1989) (citing cases); *Mission Ins. Co. v. Puritan Fashions Corp.,* 706 F.2d 599, 601 (5th Cir.1983) (same). Although a court may not dismiss an action for declaratory relief "on the basis of whim," *Hollis v. Itawamba County Loans,* 657 F.2d 746, 750 (5th Cir.1981), or without providing a written or oral

---

[3] Because of the automatic stay in the limitation proceedings, Odeco was not a named defendant.

[4] This suit was removed to federal district court, where a motion to remand is pending.

explanation, *See Rowan*, 876 F.2d at 29-30, the court may consider a variety of factors in determining whether to decide a declaratory judgment suit. *See Torch, Inc. v. LeBlanc*, 947 F.2d 193, 195 (5th Cir.1991); *Rowan*, 876 F.2d at 29.

In this case the district court found that the Texas court provided an adequate forum initially to decide the vessel status of the capsule.[5] The court further found that Odeco's declaratory judgment action was filed for the purpose of forum shopping in anticipation of other suits to be filed by the Crew. Finally, the court found that the Texas forum would not cause undue inconvenience to Odeco, which it does business in Texas, notwithstanding the probability that the Texas court might not apply the same doctrine of *forum non conveniens* as a federal court. Under the circumstances, these findings are not clearly erroneous, and, although this court might have exercised its discretion differently, the district court did not *abuse* its discretion. *See Magnolia Marine Transport v. LaPlace Towing Corp.*, 964 F.2d 1571, 1580-82 (5th Cir.1992).

III.

Nearly four decades ago, the Supreme Court recognized two situations in which a limitation of liability proceeding may be stayed to accommodate a claimant's

---

[5] We agree with Odeco that the legal viability of the crew's § 905(b) claim raises serious and novel issues of maritime law at the threshold to recovery by appellees. While the state court is undoubtedly competent to determine these issues, some of them may not finally be resolved under the parties' stipulation until the federal court considers Odeco's limitation case.

right to pursue common law remedies under the "saving to suitors" clause.[6] *See Lake Tankers Corp. v. Henn*, 354 U.S. 147, 151-53, 77 S.Ct. 1269, 1271-73, 1 L.Ed.2d 1246 (1957). Bradley stated, claims may proceed outside the limitation action (1) if they total less than the value of the vessel, or (2) if the claimants stipulate that the federal court has exclusive jurisdiction over the limitation of liability proceeding and that they will not seek to enforce a greater damage award until the limitation action has been heard by the federal court. *See Magnolia Marine Transport*, 964 F.2d at 1575-76; *In re Two "R" Drilling Co.*, 943 F.2d 576, 577-78 (5th Cir.1991); *In re Dammers & Vanderheide & Scheepvaart Maats Christina B.V.*, 836 F.2d 750, 755-60 (2d Cir.1988). Accommodating the goals of both the Limitation of Liability Act and the "saving to suitors" clause of 28 U.S.C. § 1333 has caused some tensions. *See Magnolia Marine Transport*, 964 F.2d at 1575 (citing *In re Dammers & Vanderheide*, 836 F.2d at 754).

Odeco contends that this is a multiple claimant-inadequate fund case that requires the limitation proceeding to take precedence over the state court suit. This contention is only partly true. If we assume that each of the crew claimants' damage claims must be aggregated and totted up against the limitation fund, notwithstanding their agreements that, if necessary, they will not enforce

---

[6] The "savings to suitors" clause is found in 28 U.S.C. § 1333 (1988) and provides in relevant part:

> The district courts shall have original jurisdiction, exclusive of the courts of the states, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

judgments against appellants for more than the limitation fund, then the fund is by definition inadequate. If the purpose of the Limitation Act were to accomplish judicial efficiency as well as limitation of liability, this case would clearly call for concursus proceeding. But the Supreme Court explained in *Lake Tankers*, 354 U.S. at 152-53, 77 S.Ct. at 1272-73 that liability may and should be limited consistent with preserving the claimants' right to proceed in the fora of their choice. So where, as here, all of the claimants are so anxious to take advantage of the perceived magnanimity of South Texas juries that they are willing to stipulate essentially that they will submit to two trials – the state court trial followed by a substantially redundant federal limitation proceeding – this court is hard put to deny them. We must accede to this choice *if* it is accompanied by stipulations fully protecting Odeco's right to limit liability and agreeing to abide by an admiralty court determination of the right to limit. Couched in these terms, Odeco does not confront a multiple claim-inadequate fund lawsuit.[7]

Two other sources of claimants have been mentioned. The wives of the Crew joined in the Texas lawsuit but have not appeared or attempted to file claims in the limitation proceeding. Odeco concedes that case law

---

[7] If the claimants' stipulation here covers *all* possible claimants and assures Odeco would never have to pay more than the limitation fund if the admiralty court so determines, this case is instantly distinguishable from *Pershing Auto Rentals v. Gaffney*, 279 F.2d 546 (5th Cir.1960). In that case, written shortly after *Lake Tankers*, only two out of four claimants offered to execute protective stipulations. *See id.* at 548-49. The sum of the multiple claims still far exceeded the limitation fund. *See id.*

authorizes those whose claims are derivative of the injured workers to proceed in state court upon proper stipulation without risking a multiple claim-inadequate fund situation. *See Magnolia Marine*, 964 F.2d at 1574, 1579-80; *In re Two "R" Drilling*, 943 F.2d at 577-78. The Crew judicially admitted that their stipulation should have included their spouses' rights, and we amend the stipulation for that purpose.

Of more concern is the allusion to potential claims for contribution or indemnity against Odeco by other defendants sued by the Crew in Texas court. Those companies have not yet appeared in the limitation proceeding; consequently, they are not parties to the stipulation. Because their claims, if preserved and matured, could cause a multiple claimant-inadequate fund situation to arise, we must vacate the district court's stay of the limitation case so that it can consider the implications of codefendant cross-claims.

Apart from the possible codefendant claims, the stipulations agreed to by the parties contain standard terms and adequately protect Odeco's interests. For additional clarification, we note that the Crew, through their lawyers, agreed that the stipulations apply whether their case is litigated in Texas state or federal court. The stipulations also preserve Odeco's right to litigate *all* issues pertaining to limitation in the limitation court free of any claims of *res judicata*.

CONCLUSION

The district court did not abuse its discretion in dismissing Odeco's declaratory judgment action. However, we vacate and remand the stay of the limitation proceeding for the district court to consider the ramifications of contribution or indemnity claims that might be asserted against Odeco by virtue of the pending Texas case.

AFFIRMED in part, VACATED and REMANDED in part.

APPENDIX B

MINUTE ENTRY
BERRIGAN, J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ODECO OIL & GAS CO. DRILLING DIVISION, ET AL	**CIVIL ACTION**
	NO. 92-0023
VERSUS	**SECTION L/C(4)**
DAVID J. BONNETTE, ET AL	**(Filed Oct. 5, 1994)**

ORDER AND REASONS

Pending before the Court is a "Motion by Injured Claimants/Defendants and Their Spouses, Respectively, to Lift the Restraining Order in the Limitation Proceeding." Having considered the memoranda and oral argument of the parties, the record, and the applicable law, the Court conditionally and partially grants the motion.[1]

BACKGROUND

This case has a long history before this Court. Defendants/claimants David J. Bonnette, Juan M. Porras, Henry Brumfield, Ottis Robbins and Joel Thompson (hereinafter "injured claimants") claim that they were

---

[1] The Court notes that, although the motion is styled on behalf of the injured claimants and their spouses, the spouses are not claimants in this matter.

injured during a man-overboard exercise on a Shell Offshore, Inc., platform when their emergency escape capsule fell about ninety feet into the Gulf of Mexico. Subsequently, ODECO Oil & Gas Company-Drilling Division and ODECO Drilling Services, Inc. (hereinafter "Odeco" collectively) filed a declaratory judgment action and a limitation of liability action pursuant to the Limited Liability Act, 46 U.S.C.App. § 181 *et seq.* (hereinafter "Limitation Act"), alleging the value of the escape capsule, the "vessel," did not exceed $30,000.

Initially, the Court issued an order staying further litigation against Odeco arising from the accident until the determination of the limitation proceeding. (Document 3.) The order also required that "persons or concerns" claiming damages file claims against Odeco in the limitation proceeding. The injured claimants filed such claims. (Documents 6 and 8.)

Four of the five injured claimants and their spouses also filed a personal injury suit in Texas state court naming as defendants Shell Oil Co. and Shell Offshore, Inc., (hereinafter, collectively, "Shell"), Whittaker Corporation (hereinafter "Whittaker") and Porras, the fifth injured claimant. (Document 15, Exh. 1.) Porras filed cross claims against these defendants, seeking damages for his injuries. (Document 15, Exh. 1.) The injured claimants then asked this Court to dismiss Odeco's declaratory judgment action and to lift the stay, which would have allowed them to litigate claims against Odeco in state court before proceeding with the limitation action. (Document 15.) In

support of their request, the injured claimants filed a "Stipulation." (Document 15, Attachment.)[2] The Court

---

[2] The injured claimants stipulated, in pertinent part:

1. the claimants/defendants, David J. Bonnette, Juan M. Porras, Henry Brumfield, Ottis L. Robbins and Joel Thompson, hereby stipulate and agree that said claimants/defendants in the Limitation proceeding shall bring all possible claims and causes of action against complainants in limitation, ODECO Oil & Gas Company-Drilling Division and ODECO Drilling Services, Inc. in the same court.

2. Claimants/Defendants . . . hereby concede that [Odeco] is entitled to and has the right to litigate all issues relating to limitation of liability . . . but claimants specifically reserve the right to deny and contest in this Court all assertions and allegations made by ODECO in the Complaint of Limitation filed herein.

3. Claimants/Defendants herein will not seek in action pending in the 103rd Judicial District Court of Cameron County, Texas, in which a jury trial has been demanded, any judgment or ruling on the issue of Odeco's right to limitation of liability; and hereby consents to waive any claim of res judicata relevant to the issue of limitation of liability based on any judgment that may be rendered in said State Court action.

4. Claimants/Defendants herein, while not stipulating to or agreeing to $30,000.00 as the value of the complainants's interest in the "Whittaker Capsule No. 1" and her pending freight, hereby stipulate that in the event there is a judgment or recovery in the State Court action in excess of $30,000.00, whether against ODECO, or any other liable party or parties who may make cross claim [sic] or claims over against ODECO, in no event will claimants herein seek to enforce said excess judgment or recovery insofar as

lifted the stay and dismissed the declaratory judgment action. (Document 28.)

Odeco appealed, and the United States Court of Appeal for the Fifth Circuit held that this Court did not abuse its discretion in dismissing Odeco's declaratory judgment action. *Odeco Oil & Gas Co., Drilling Division v. Bonnette*, 4 F.3d 401, 404 (5th Cir. 1993). However, the court of appeals vacated and remanded the stay of the limitation proceeding for the Court to consider the ramifications of contribution or indemnity claims that might be asserted against Odeco in the pending Texas case. *Id.* at 405. The appeals court expressed concern about allusions to potential claims for contribution or indemnity against Odeco by other defendants sued in Texas state court. *Id.*

On remand, this Court determined that a multiple-claimant situation existed because of the indemnification and/or contribution claims that could be filed in the state action by Shell and/or Whittaker against Odeco and maintained the stay. (Document 51.)

---

same may expose Odeco to liability in excess of $30,000.00 pending the adjudication of the Complaint of Limitation of Liability in this Court.

5. Claimants/Defendants herein stipulate and agree that if ODECO is held responsible for attorneys' fees and costs which may be assessed against it by a co-liable defendant or a party seeking indemnification for attorneys' fees and costs, then such claim shall have priority over the claim of claimants/defendants herein.

Later, on motion of the injured claimants, the Court partially and temporarily lifted the stay to allow the injured claimants to file an action against Odeco in the Texas proceeding. (Document 56.) The Court also ordered that any entities with third-party claims against Odeco in the state action also file those claims in this action. (Document 56.)

In accord with this order, Whittaker and Shell filed claims in this limitation action. (Documents 58 and 64.) Whittaker's claim seeks contribution from Odeco in the event that Whittaker would be found liable to the injured claimants. (Document 58.) Shell's claim against Odeco is for indemnity for defense costs and attorneys' fees as well as legal and contractual indemnity and contribution. (Document 64.)

The injured claimants and their spouses now again move this Court to lift the stay so that they may proceed in state court in Texas against the defendants.[3]

---

[3] Initially, the Court notes that the present motion is different from any prior motions in this case since remand from the court of appeals in that the claims before the Court by Whittaker and Shell are real and definite, not potential. Further, the Court's holding entered on May 18, 1994, was that claims for indemnification and/or contribution were not derivative of the claims of the injured claimants but instead created a multiple-claimant situation, which prevented the stay from being lifted. Finally, and more importantly, the injured claimants raise a new argument not previously addressed by this Court.

ANALYSIS

The injured claimants first contend that their present stipulations are sufficient to protect Odeco under the Limitation Act. The injured claimants also contend that they do not need the consent of Whittaker or Shell in their stipulations in order to lift the stay and that the present stipulations are sufficient to protect Odeco from claims by Whittaker and Shell. Further, the injured claimants argue that the court could partially lift the stay as to their claims only, maintaining the stay as to any claims by Whittaker and Shell against Odeco. The Court addresses these arguments in turn.

First, in regard to Odeco alone, there is no doubt that the stipulations of the injured claimants are sufficient. Indeed, the Fifth Circuit stated: "Apart from the possible codefendant claims, the stipulations agreed to by the parties contain standard terms and adequately protect Odeco's interests." *Odeco*, 4 F.3d at 405.

Thus, the issue is whether the stay should be lifted in view of the multiple-claimant situation that exists. The Court finds the contribution claims do not present an obstacle to lifting the stay because the injured claimants have stipulated that they will not enforce any judgment against Odeco or any other party making claims against Odeco in the state action that would expose Odeco to liability in excess of $30,000 pending adjudication of this case. (Document 15, Stipulation 4.) The courts in both *Complaint of Dammers & Vanderheide*, 836 F.2d 750, 753-54, 757-60 (2nd Cir. 1988) (hereinafter "*Dammers*") and *Kattelman v. Otis Engineering Corp.*, 701 F.Supp 560, 562 (E.D.

La. 1988) (Feldman, J.) recognized this type of stipulation as appropriate, and so does this Court.[4]

In regard to the claims for indemnity, as noted above, only Shell has made a claim for indemnity (whether legal, contractual or defense indemnity). The Court finds that the injured claimants' stipulation not to enforce any judgment over $30,000 also resolves the issue of legal or contractual indemnity such that Odeco is not put at risk for any amount above $30,000 prior to the adjudication of this limitation action. *See Dammers, supra; Kattelman, supra.*

The only remaining issue is whether the injured claimants' stipulation resolves the issue of Shell's claim for defense indemnity, *i.e.*, indemnity for attorneys' fees and costs. The injured claimants have stipulated as follows in regard to claims against Odeco for attorneys' fees and costs:

> Claimants/Defendants herein stipulate and agree that if ODECO is held responsible for attorneys' fees and costs which may be assessed against it by a co-liable defendant or a party seeking indemnification for attorneys' fees and

---

[4] Even Whittaker apparently recognizes this, for it states in its opposition memorandum: "*[I]f* [Shell's and Whittaker's] claims were *limited* to contribution only and if there is no finding of liability or damages against Shell or Whittaker, and if claimants agree not to enforce same, then perhaps Claimants' argument and stipulations would be more persuasive." (Document 76, Memorandum, p. 5, emphasis in original.) The first and third dependent clauses in this statement seem to show Whittaker's understanding of the issue; as indicated, the second conditional clause is not applicable under the stipulations filed.

> costs, then such claims shall have priority over the claim of claimants/defendants herein.
>
> (Document 15, Attachment, Stipulation No. 5.)

The injured claimants contend that their stipulation coupled with a procedure approved by *Dammers, supra,* and referred to with apparent approval in *Gorman v. Cerasia,* 2 F.3d 519 (3rd Cir. 1993), would be sufficient to protect Odeco from claims for indemnity for defense costs and attorneys' fees.

In both of those cases, the courts of appeal found that a multiple-claimant situation existed. *Dammers,* 836 F.2d at 757; *Gorman,* 2 F.3d at 526. In *Dammers* the Second Circuit upheld the "safeguards embodied in the [injured claimants'] stipulation *and* the district court decision" as protecting the vessel owner in the limitation action. *Dammers,* 836 F.2d at 757-760 (emphasis added). The district court's decision included the holding "that if any of the third parties also being sued by the [injured claimants] in state court were to seek indemnification or recovery from the shipowners based on their liability to the [injured claimants], 'the [c]ourt would be obligated to grant [ ] a stay of any [such] . . . claims . . . unless the third parties executed appropriate stipulations preserving . . . [the shipowners'] right to limitation.' " *Id.* at 758, quoting *Complaint of Dammers & Vanderheide,* 660 F.Supp. 153, 159 (S.D.N.Y. 1987).

In *Gorman* the Third Circuit noted this language with apparent approval in remanding the case for further consideration by the trial court. *Gorman,* 2 F.3d at 527.

The injured claimants argue that their present attorneys' fees stipulation and the procedure approved in

Dammers would protect Odeco from any defense indemnity claims while allowing them to proceed in state court under the "Savings to Suitors" clause of 28 U.S.C. § 1333.[5]

Although it has not made a claim for defense indemnity, Whittaker argues that the injured claimants attorneys' fees stipulation is insufficient because its and Shell's claim for defense indemnity is independent of the claims of injured claimants.[6] Whittaker contends that the claims for defense indemnification in the Texas case could easily exceed $30,000 and that the injured claimants' stipulation only gives attorneys' fees claims priority over their claims. Further, Whittaker argues that because neither Shell nor Whittaker have entered into stipulations to protect Odeco on this defense indemnification claim, the Court can [sic] not lift the stay in this multiple-claimant situation.

The Court disagrees. although the cited language in *Dammers* and *Gorman* refers to legal indemnification, the Court finds that the issue in this case is analogous. The safeguard proposed by the *Dammers* district court is also applicable to claims of the defense indemnification. In

---

[5] This statute states, in pertinent part:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

[6] Although Shell is the only party to file a claim in this matter for any type of indemnity, Shell did not raise this issue. Nevertheless, it bears addressing.

reaching this holding, the Court is cognizant of the tension between the Limitation Act and the injured claimants' right to proceed with their common-law remedies in state court under the "Savings to Suitors" clause. *Odeco*, 4 F.3d at 404; *Dammers*, 836 F.2d at 754. The Court also is mindful of its duty to resolve that tension in a way that protects all parties' legal rights. Partially lifting the stay accomplishes that goal. "As long as the admiralty court can effectively ensure that a shipowner will not face liability in excess of the limitation fund, it must take all steps necessary to assure that claimants are allowed to pursue their common law remedies in accordance with the 'savings to suitors' clause." *Id.* at 759. *See Odeco*, 4 F.3d at 404-05.

Thus, the Court will partially lift the stay in this matter to allow plaintiffs to proceed with their claims in state court. The Court also will partially lift the stay to allow Shell to proceed with its claims against Odeco for legal and/or contractual indemnity and contribution and to allow Whittaker to proceed with its claim against Odeco for contribution. However, the stay will be maintained in all other respects, including but not limited to maintaining the stay as to Shell's claims for indemnification for defense or attorney's fees. Additionally, Whittaker and Shell will be precluded from utilizing any type of issue preclusion, *e.g.*, res judicata or collateral estoppel, to undermine Odeco's right to limitation. *Dammers*, 836 F.2d at 758-60.

The Court also will retain jurisdiction of this matter and maintain the stay against entry of judgment and enforcement of any recovery in the state action pending

the outcome of this limitation proceeding. *Id. See Kattelman,* 701 F.Supp. at 565.

The Court turns briefly to the other arguments raised in opposition to the injured claimants' present motion. First, both Shell and Whittaker argue generally that lifting the stay may result in a multiplicity of lawsuits and inconvenience of witnesses. This argument falls short. As the Fifth Circuit stated in *Odeco*: "If the purpose of the Limitation Act were to accomplish judicial efficiency as well as limitation of liability, this case would clearly call for concursus proceeding. But . . . liability may and should be limited consistent with preserving the claimants' right to proceed in the fora of their choice." *Odeco,* 4. F.3d at 404-05.

Second, Whittaker argues that this case is more like *Pershing Auto Rentals v. Gaffney,* 279 F.2d 546 (5th Cir. 1960), where the court of appeals refused to allow only two of four injured claimants to proceed in state court.[7] However, *Pershing* is distinguishable on its facts for that very reason. While *Pershing* may have been a multiple-claimant case, all of the claimants were injured claimants and not all of the injured claimants desired to proceed in state court.

---

[7] In *Pershing* the four claimants had been working aboard a vessel when it exploded, injuring them. *Id.* at 548. They each filed claims in the limitation action. *Id.* Two years later two of the four moved for a modification of the injunction issued in the limitation action to allow them to proceed in state court. *Id.* The district court modified the injunction and conditionally allowed the claimants to proceed in state court. *Id.* at 549. The Fifth Circuit reversed and remanded on the basis that not all of the injured claimants joined in the stipulation. *Id.* at 552.

This case is unlike *Pershing* because all of the injured claimants desire to take advantage of the "Savings to Suitors" clause and try their case in the Texas court. Additionally, the partial lifting of the stay combined with the Court's retention of jurisdiction and the "claimants' stipulations cover [ ] all possible claimants and assures Odeco would never have to pay more than the limitation fund should the admiralty court so determine . . . . " *Odeco*, 4 F.3d at 405, n. 7.[8]

Finally, the Court addresses a seeming obstacle to lifting the stay that has been removed by the Fifth Circuit but requires the injured plaintiffs to amend their Stipulation *pro forma*. Because the injured claimants' spouses are also seeking damages in the Texas case, the injured claimants' stipulations must address these spousal claims. The Fifth Circuit stated: "The [injured claimants] judicially admitted that their stipulation should have included their spouses' rights, and we amend the stipulation for that purpose." *Odeco*, 4. F.3d at 405. In order that the record is complete, the Court will condition the grant of the lifting

---

[8] *Whittaker* also *argues* in its memorandum that the injured claimants ignore Shell's direct action in state court against Shell's insurer. Shell filed a claim against the insurer in this action and the state suit after seeking permission from this Court. (Document 71.) At oral argument on the present motion, Shell represented that its claim against the insurer was based on Shell's alleged status as an additional assured with Odeco and was not based on direct action. Based upon this representation and the third-party claim that Shell filed (Document 64) as well as the injured claimants' stipulations and the Court's decision to only partially lift the stay and to retain jurisdiction, this is not an issue. This case is unlike *Magnolia Marine Transport Co., Inc. v. Laplace Towing Corp.*, 964 F.2d 1571, 1579-80 (5th Cir. 1992).

of the stay against Odeco upon the injured claimants' filing a proper supplemental and/or amended stipulation to address their spousal rights.

Accordingly,

IT IS ORDERED that, upon injured claimants' filing of an appropriate stipulation addressing their spouses' claims, the restraining order staying the prosecution of claims against Odeco is **PARTIALLY LIFTED** in regard to the following claims: the claims of the injured claimants against Odeco, the claims of Whittaker against Odeco for contribution, and the claims of Shell against Odeco for legal and/or contractual indemnity or contribution.

IT IS FURTHER ORDERED that neither Shell nor Whittaker may utilize issue preclusion to prevent Odeco from seeking limitation.

IT IS FURTHER ORDERED that the restraining order staying the prosecution of claims against Odeco is **MAINTAINED** in regard to the claim of Shell against Odeco for defense indemnity, including but not limited to attorneys' fees and costs.

IT IS FURTHER ORDERED that this Court **RETAINS JURISDICTION** over the limitation proceeding and **MAINTAINS** the stay against entry of an [sic] judgment or enforcement of any recovery in the state-court action pending the outcome of the limitation proceeding.

IT IS FURTHER ORDERED that this limitation action is administratively stayed, pending resolution of the injured claimants' action for tort damages in state

court, reserving to the parties the right to file a motion to reopen this matter as required.

New Orleans, Louisiana, this 5th day of October, 1994.

/s/ Ginger Berrigan
GINGER BERRIGAN
UNITED STATED
DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ODECO OIL & GAS COMPANY DRILLING DIVISION AND ODECO DRILLING SERVICES, INC.	*	CIVIL ACTION NO.: 92-0023 SECTION: "R"
VERSUS	*	MAGISTRATE: (4)
DAVID J. BONNETTE, JUAN M. PORRAS, HENRY BRUMFIELD, OTTIS L. ROBBINS AND JOEL THOMPSON	*	
**********	*	
IN THE MATTER OF:	*	
ODECO DRILLING SERVICES, INC., AS OWNER, AND ODECO OIL & GAS COMPANY – DRILLING DIVISION, AS OWNER PRO HAC VICE OF THE ESCAPE CAPSULE WHITTAKER CAPSULE NO. 1, IN A CAUSE OF ACTION FOR EXONERATION FROM OR LIMITATION OF LIABILITY	*	

ORDER

Considering the foregoing Motion for Approval of Second Amended Stipulation;

IT IS HEREBY ORDERED that the Second Amended Stipulation is approved and the Stay Order is lifted consistent with and subject to all prior opinions rendered herein.

New Orleans, Louisiana this 16th day of December, 1994.

/s/ Sarah Vance
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ODECO OIL & GAS COMPANY DRILLING DIVISION AND ODECO DRILLING SERVICES, INC.	*	CIVIL ACTION
	*	NO.: 92-0023
	*	SECTION: "R"
VERSUS	*	MAGISTRATE: (4)
DAVID J. BONNETTE, JUAN M. PORRAS, HENRY BRUMFIELD, OTTIS L. ROBBINS AND JOEL THOMPSON	*	
**********	*	
IN THE MATTER OF:	*	
ODECO DRILLING SERVICES, INC., AS OWNER, AND ODECO OIL & GAS COMPANY – DRILLING DIVISION, AS OWNER PRO HAC VICE OF THE ESCAPE CAPSULE WHITTAKER CAPSULE NO. 1, IN A CAUSE OF ACTION FOR EXONERATION FROM OR LIMITATION OF LIABILITY	*	

SECOND AMENDED STIPULATION

NOW INTO COURT, through undersigned counsel come claimants/defendants, David J. Bonnette, Juan M. Porras, Joel Thompson, Ottis L. Robbins, *their spouses,* and Henry Brumfield, who submit the following stipulation in the above captioned matter, as follows, to-wit:

1. The claimants/defendants, David J. Bonnette, Juan M. Porras, Ottis L. Robbins, Joel Thompson, their spouses, and Henry Brumfield hereby stipulate and agree that said claimants/defendants in the limitation proceeding shall bring all possible claims and causes of actions against complainants in limitation, ODECO Oil and Gas Company – Drilling Division and ODECO Drilling Services, Inc. in the same court.

2. Claimants/defendants, David J. Bonnette, Juan M. Porras, Ottis L. Robbins, Joel Thompson, their spouses, and Henry Brumfield hereby concede that complainants, ODECO Oil and Gas Company – Drilling Division and ODECO Drilling Services, Inc., (hereinafter referred to as ODECO), is entitled to and has the right to litigate all issues relating to limitation of liability pursuant to the provisions of 46 USC, §182-189, in this court, but claimants specifically reserve the right to deny and contest in this court all assertions and allegations made by ODECO in the complaint for limitation filed herein.

3. Claimants/defendants herein will not seek in action pending in the 103rd Judicial District Court of Cameron County, Texas, in which a jury trial has been demanded, any judgment or ruling on the issue of ODECO'S

right to limitation of liability; and hereby consents to waive any claim of *res judicata* relevant to the issue of limitation of liability based on any judgment that may be rendered in said state court action.

4. Claimants/defendants herein, while not stipulating to or agreeing to $30,000.00 as the value of complainant's interest in the "Whittaker Capsule No. 1" and her pending freight, hereby stipulate that in the event that there is a judgment or recovery in the state court action in excess of $30,000.00, whether against ODECO, or any other liable party or parties who may make cross-claim or claims over against ODECO, in no event will claimants herein, separately or together, seek to execute or enforce said excess judgment or recovery insofar as same may expose ODECO to liability in excess of $30,000.00 pending the adjudication of the Complaint of Limitation of Liability in this court.

5. Claimants/defendants herein stipulate and agree that if ODECO is held responsible for attorney's fees and costs, which may be assessed against it by a co-liable defendant or a party seeking indemnification for attorney's fees and costs, then such claim shall have priority over the claim of claimants/defendants herein.

6. The claims and causes of action asserted by the injured claimants herein, David Bonnette, Juan Porras, Henry Brumfield, Ottis Robbins and Joel Thompson have irrevocable priority over the claims and causes of action of any and all spouses.

7. Claimants/defendants herein acknowledge Odeco's contractual rights to applicable insurance policy(ies) herein and give priority to Odeco as to their contractual rights herein.

8. Attached hereto and made a part hereof as Exhibits "1", "2", "3", "4", and "5" respectively, are the verifications and adoptions of the Second Amending Stipulation by all injured claimants/defendants in the Limitation Proceeding.

Respectfully submitted,

DISCON LAW FIRM

BY: /s/ Thomas M. Discon

THOMAS M. DISCON,
T.A. #14219
JOHN G. DISCON, #4961
GREGORY T. DISCON,
#22037
Two Lakeway Center,
Ste. 1240
3850 N. Causeway
Boulevard
Metairie, Louisiana 70002
Telephone: (504) 835-6435
Attorney for
Claimants/Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served on all counsel of record by placing same in the United States Mail, properly addressed and postage prepaid, this 15th day of December, 1994.

/s/ Thomas M. Discon
THOMAS M. DISCON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ODECO OIL & GAS COMPANY DRILLING DIVISION AND ODECO DRILLING SERVICES, INC.	*	CIVIL ACTION
	*	NO.: 92-0023
	*	SECTION: "L/C"
VERSUS	*	MAGISTRATE: (4)
DAVID J. BONNETTE, JUAN M. PORRAS, HENRY BRUMFIELD, OTTIS L. ROBBINS AND JOEL THOMPSON	*	
**********	*	
IN THE MATTER OF:	*	
ODECO DRILLING SERVICES, INC., AS OWNER, AND ODECO OIL & GAS COMPANY – DRILLING DIVISION, AS OWNER PRO HAC VICE OF THE ESCAPE CAPSULE WHITTAKER CAPSULE NO. 1, IN A CAUSE OF ACTION FOR EXONERATION FROM OR LIMITATION OF LIABILITY	*	

VERIFICATION AND ADOPTION OF SECOND AMENDED STIPULATION BY CLAIMANTS/DEFENDANTS

NOW INTO COURT, come claimants/defendants, David Bonnette and Leslie Bonnette, who show this Honorable Court that they adopt in its entirety the Second Amended Stipulation filed in this Limitation Proceeding.

/s/ David J. Bonnette
DAVID J. BONNETTE

/s/ Leslie Bonnette
LESLIE BONNETTE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ODECO OIL & GAS COMPANY DRILLING DIVISION AND ODECO DRILLING SERVICES, INC.	*	CIVIL ACTION NO.: 92-0023 SECTION: "L/C"
VERSUS	*	MAGISTRATE: (4)
DAVID J. BONNETTE, JUAN M. PORRAS, HENRY BRUMFIELD, OTTIS L. ROBBINS AND JOEL THOMPSON	*	
**********	*	
IN THE MATTER OF:	*	
ODECO DRILLING SERVICES, INC., AS OWNER, AND ODECO OIL & GAS COMPANY – DRILLING DIVISION, AS OWNER PRO HAC VICE OF THE ESCAPE CAPSULE WHITTAKER CAPSULE NO. 1, IN A CAUSE OF ACTION FOR EXONERATION FROM OR LIMITATION OF LIABILITY	*	

VERIFICATION AND ADOPTION OF SECOND AMENDED STIPULATION BY CLAIMANTS/DEFENDANT

NOW INTO COURT, come claimants/defendant, Henry Brumfield, who show this Honorable Court that he adopts in its entirety the Second Amended Stipulation filed in this Limitation Proceeding.

/s/ Henry Brumfield
HENRY BRUMFIELD

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ODECO OIL & GAS COMPANY DRILLING DIVISION AND ODECO DRILLING SERVICES, INC.	*	CIVIL ACTION
	*	NO.: 92-0023
	*	SECTION: "L/C"
VERSUS	*	MAGISTRATE: (4)
DAVID J. BONNETTE, JUAN M. PORRAS, HENRY BRUMFIELD, OTTIS L. ROBBINS AND JOEL THOMPSON	*	
**********	*	
IN THE MATTER OF:	*	
ODECO DRILLING SERVICES, INC., AS OWNER, AND ODECO OIL & GAS COMPANY – DRILLING DIVISION, AS OWNER PRO HAC VICE OF THE ESCAPE CAPSULE WHITTAKER CAPSULE NO. 1, IN A CAUSE OF ACTION FOR EXONERATION FROM OR LIMITATION OF LIABILITY	*	

VERIFICATION AND ADOPTION OF SECOND AMENDED STIPULATION BY CLAIMANTS/DEFENDANTS

NOW INTO COURT, come claimants/defendants, Joel Thompson and Janet Thompson, who show this Honorable Court that they adopt in its entirety the Second Amended Stipulation filed in this Limitation Proceeding.

/s/ Joel Thompson
JOEL THOMPSON

/s/ Janet Thompson
JANET THOMPSON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ODECO OIL & GAS COMPANY DRILLING DIVISION AND ODECO DRILLING SERVICES, INC.	*	CIVIL ACTION NO.: 92-0023
VERSUS	*	SECTION: "L/C"
DAVID J. BONNETTE, JUAN M. PORRAS, HENRY BRUMFIELD, OTTIS L. ROBBINS AND JOEL THOMPSON	*	MAGISTRATE: (4)
**********	*	
IN THE MATTER OF:	*	
ODECO DRILLING SERVICES, INC., AS OWNER, AND ODECO OIL & GAS COMPANY – DRILLING DIVISION, AS OWNER PRO HAC VICE OF THE ESCAPE CAPSULE WHITTAKER CAPSULE NO. 1, IN A CAUSE OF ACTION FOR EXONERATION FROM OR LIMITATION OF LIABILITY	*	

VERIFICATION AND ADOPTION OF SECOND AMENDED STIPULATION BY CLAIMANTS/DEFENDANTS

NOW INTO COURT, come claimants/defendants, Juan M. Porras and Maggie Porras, who show this Honorable Court that they adopt in its entirety the Second Amended Stipulation filed in this Limitation Proceeding.

/s/ Juan M. Porras
JUAN M. PORRAS

/s/ Maggie Porras
MAGGIE PORRAS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ODECO OIL & GAS COMPANY DRILLING DIVISION AND ODECO DRILLING SERVICES, INC.	*	CIVIL ACTION
	*	NO.: 92-0023
	*	SECTION: "L/C"
VERSUS	*	MAGISTRATE: (4)
DAVID J. BONNETTE, JUAN M. PORRAS, HENRY BRUMFIELD, OTTIS L. ROBBINS AND JOEL THOMPSON	*	
**********	*	
IN THE MATTER OF:	*	
ODECO DRILLING SERVICES, INC., AS OWNER, AND ODECO OIL & GAS COMPANY – DRILLING DIVISION, AS OWNER PRO HAC VICE OF THE ESCAPE CAPSULE WHITTAKER CAPSULE NO. 1, IN A CAUSE OF ACTION FOR EXONERATION FROM OR LIMITATION OF LIABILITY	*	

VERIFICATION AND ADOPTION OF SECOND AMENDED STIPULATION BY CLAIMANTS/DEFENDANTS

NOW INTO COURT, come claimants/defendants, Ottis L. Robbins and Kathy Robbins, who show this Honorable Court that they adopt in its entirety the Second Amended Stipulation filed in this Limitation Proceeding.

/s/ Ottis L. Robbins
OTTIS L. ROBBINS

/s/ Kathy Robbins
KATHY ROBBINS

APPENDIX D

ODECO OIL AND GAS COMPANY, DRILLING DIVISION and Odeco Drilling Services, Inc., Plaintiffs-Appellants,

v.

David J. BONNETTE, et al., Defendants-Appellees, Shell Oil Company and Shell Offshore Inc., Movants-Appellees.

No. 95-30041.
United States Court of Appeals,
Fifth Circuit.
Feb. 14, 1996.

Offshore drilling company brought limitation of liability proceeding arising out of accident in which employees were injured when escape capsule fell from fixed platform into ocean. The United States District Court for the Eastern District of Louisiana, Veronica D. Wicker, J., dismissed declaratory judgment action and lifted stay of state court proceedings, and drilling company appealed. The Court of Appeals, *4 F.3d 401*, affirmed dismissal of declaratory judgment action, but remanded with respect to stay. On remand, the District Court, Sarah S. Vance, J., *866 F.Supp. 295*, entered order partially lifting stay of state court tort action. Drilling company appealed. The Court of Appeals, Emilio M. Garza, Circuit Judge, held that stipulation signed only by employees, and not by companies asserting contribution and indemnity claims, did not adequately protect shipowner's right to limit its liability, and thus federal forum would remain sole forum for adjudicating claims against drilling company.

Vacated and remanded.

Thomas W. Thorne, Jr., Edwin John Heiser, James H. Daigle, Lemle & Kelleher, New Orleans, LA for plaintiffs-appellants.

Thomas Massa Discon, Metairie, LA, for Bonnette, Porras and Robbins, defendants-appellees.

John Browning Baldwin, Baldwin & Baldwin, Marshall, TX, for Henry Brumfield, defendant-appellee.

William L. Denton, Biloxi, MS, for Joel Thompson, defendant-appellee.

Arthur A. Crais, Jr., New Orleans, LA, for Shell Oil Co., Shell Offshore Inc., Liverpool & London P & I Club.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before WIENER, EMILIO M. GARZA and BENAVIDES, Circuit Judges.

EMILIO M. GARZA, Circuit Judge:

Odeco Oil & Gas Company and Odeco Drilling Services, Inc. (collectively "Odeco") appeal the district court's order partially lifting its stay of a tort action in Texas state court in which Odeco is a defendant. We vacate and remand.

I

While conducting safety drills on a fixed platform in the Gulf of Mexico, five Odeco employees were injured when an escape capsule free-fell ninety feet, and crashed

into the ocean.[1] Fearing litigation, Odeco filed a declaratory judgment action in federal court and sought to limit its liability pursuant to the Limited Liability Act, 46 U.S.C.App. Sec. 183 *et seq.* ("Limitation Act"). The district court stayed all litigation against Odeco arising out of the incident in order to determine Odeco's right to limitation.

Four of the injured parties ("injured claimants") then filed suit in Texas state court, and filed a motion in federal district court to lift the stay preventing them from suing Odeco in state court. In accordance with principles of maritime law, the injured claimants stipulated to Odeco's right to limit its liability in federal court. The district court granted the injured claimants' motion to lift the stay, and dismissed Odeco's declaratory judgment action. On appeal, we affirmed the dismissal of Odeco's declaratory judgment action, but vacated the district court's lifting of the stay. We were concerned that potential claims for contribution and indemnity in the state court proceeding could, without proper stipulations, frustrate Odeco's right to limit its liability. We remanded the case to the district court to consider the effects of any potential claims for contribution and indemnity on Odeco's right to limitation. *Odeco Oil & Gas Co., Drilling Division v. Bonnette, 4 F.3d 401, 405 (5th Cir.1993) ("Odeco I"), cert. denied, ___ U.S. ___, 114 S.Ct. 1370, 128 L.Ed.2d 47* (1994).

---

[1] The facts and procedural history of this case are more fully developed in a prior opinion. *See Odeco Oil & Gas Co., Drilling Division v. Bonnette, 4 F.3d 401* (5th Cir.1993) *("Odeco I"), cert. denied, ___ U.S. ___, 114 S.Ct. 1370, 128 L.Ed.2d 47* (1994).

On remand, the district court allowed state-court defendants Shell Oil Company and Shell Offshore, Inc. (collectively "Shell"), and Whittaker Corporation[2] to file contribution and indemnity claims against Odeco in both state court and in the limitation proceeding.[3] Shell and Whittaker Corporation would not, however, stipulate as to Odeco's right to limitation. In order to proceed in state court, the injured claimants entered into a "Second Amended Stipulation" designed to protect Odeco's right to limitation vis-a-vis Shell's and Whittaker Corporation's claims for contribution and indemnity.[4] The district court ruled the stipulation adequate, and partially lifted its stay to allow the tort action in state court to proceed against

---

[2] Shell owned and operated the fixed platform upon which the accident occurred. Whittaker Corporation designed and manufactured the capsule.

[3] Whittaker Corporation seeks contribution from Odeco in the event that Whittaker is found liable to the injured claimants. Shell seeks indemnity for defense costs and attorneys' fees along with legal and contractual indemnity and contribution should Shell be held liable.

[4] The claimants stipulated that all issues of limitation would be litigated in federal court, free from any claims of *res judicata*. The claimants also stipulated that they would not seek recovery from Odeco in excess of $30,000, until the district court had determined Odeco's right to limitation. Nor would the claimants pursue claims against Shell and Whittaker in excess of $30,000 to the extent that those claims would flow back to Odeco and expose Odeco to total liability in excess of $30,000. The claimants further stipulated that Shell's and Whittaker Corporation's defense indemnification claims against Odeco, for attorney's fees and costs, would take precedence over any recovery by the claimants. We note that the $30,000 figure is the alleged value of the vessel and its freight, the true value of which has not been determined by the district court.

Odeco and the other defendants.[5] Odeco appeals, asserting that the district court erred in partially lifting the stay. Odeco claims that the Second Amended Stipulation inadequately protects its rights under the Limitation Act.

II

Whether a stipulation adequately protects a party's rights under the Limitation Act is a question of law which we review *de novo*. *See In re Complaint of Port Arthur Towing Co. ex rel. M/V MISS CAROLYN, 42 F.3d 312, 316-17* (5th Cir.) (reviewing *de novo* the adequacy of a stipulation under the Limitation Act), *cert. denied, ___ U.S. ___, 116 S.Ct. 87, 133 L.Ed.2d 44* (1995). We review a district court's decision to lift a stay for abuse of discretion. *Id. at 317; Magnolia Marine Transport Co. v. Laplace Towing Corp., 964 F.2d 1571, 1582* (5th Cir.1992).

A shipowner facing potential liability for an accident occurring on the high seas may file suit in federal court seeking protection under the Limitation Act. The Limitation Act allows a shipowner, lacking privity or knowledge, to limit liability for damages arising from a maritime accident to the "amount or value of the interest

---

[5] The district court's order allows the injured claimants to pursue their claims in state court against all defendants, Shell to pursue its claims against Odeco for legal and contractual indemnity and contribution, and Whittaker Corporation to pursue its claim against Odeco for contribution. The district court maintained the stay in all other respects, including disallowing Shell from pursuing its claim for defense indemnification and attorneys' fees. The order also precludes Shell and Whittaker Corporation from utilizing *res judicata* or issue preclusion to undermine Odeco's right to limitation.

of such owner in such vessel, and her freight then pending." 46 U.S.C.App. Sec. 183(a). The Limitation Act is designed to protect shipowners in those cases in which "the losses claimed exceed the value of the vessel and freight." *Magnolia Marine Transport Co., 964 F.2d at 1575.* A shipowner's right to limitation, however, is cabined by the "saving to suitors" clause. *See 28 U.S.C. Sec. 1333(1)* (giving federal district courts exclusive jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction," but "saving to suitors in all cases all other remedies to which they are otherwise entitled"). The saving to suitors clause evinces a preference for jury trials and common law remedies in the forum of the claimant's choice. *See Magnolia Marine Transport Co., 964 F.2d at 1575* (citing *In re Complaint of Dammers & Vanderheide & Scheepvaart Maats Christina B.V., 836 F.2d 750, 754* (2d Cir.1988)). Although tension exists between the Limitation Act and the saving to suitors clause, "the [district] court's primary concern is to protect the shipowner's absolute right to claim the Acts's liability cap, and to reserve the adjudication of that right in the federal forum." *Magnolia Marine Transport Co., 964 F.2d at 1575.*

In mediating between the right of shipowners to limit their liability in federal court and the rights of claimants to sue in the forum of their choice, federal courts have developed two instances in which a district court must allow a state court action to proceed: (1) when the total amount of the claims does not exceed the shipowner's declared value of the vessel and its freight, and (2) when *all claimants* stipulate that the federal court has exclusive jurisdiction over the limitation proceeding, and that the claimants will not seek to enforce a damage award

greater than the value of the ship and its freight until the shipowner's right to limitation has been determined by the federal court. *See, e.g., Texaco, Inc. v. Williams, 47 F.3d 765, 768* (5th Cir.), *cert. denied, ___ U.S. ___, 116 S.Ct. 275, 133 L.Ed.2d 196* (1995). In both instances, allowing the state court action to proceed is contingent on protecting the "absolute" right of the shipowner to limit his or her liability. *In re Complaint of Port Arthur Towing Co., 42 F.3d at 316; Odeco I, 4 F.3d at 405.*

At issue in this case is whether the Second Amended Stipulation adequately protects Odeco's right to limit its liability. Specifically, the question before this court is whether the parties seeking contribution and indemnity are "claimants" within the meaning of the Limitation Act, and therefore must actually sign the stipulation before the injured claimants may proceed in state court.[6]

We believe that we have previously resolved the question of whether parties seeking contribution and

---

[6] The injured claimants argue on appeal that the district court abused its discretion in allowing Shell and Whittaker Corporation to file their cross-claims for contribution and indemnity after the time for filing such claims had expired. *See* Supplemental Rules for Certain Admiralty and Maritime Claims F(4) (setting forth procedures by which the district court shall limit the amount of time to file claims in the limitation proceeding, but allowing that "[f]or cause shown, the court may enlarge the time within which claims may be filed"). It is within the district court's sound discretion to allow or deny the filing of claims outside the prescribed time period. *Lloyd's Leasing Ltd. v. Bates, 902 F.2d 368, 371* (5th Cir.1990). After careful review of the record, we cannot say the district court abused its discretion in allowing Shell and Whittaker Corporation to file their claims after the claims period expired.

indemnity are "claimants" within the meaning of the Limitation Act. *See In re Complaint of Port Arthur Towing, Co., 42 F.3d at 316* (recognizing that "a 'claimant' in this context includes a codefendant who is asserting a cross claim for indemnification, costs, and attorneys' fees"); *Odeco I, 4 F.3d at 405* (vacating stay to allow the district court to examine possible claims for contribution and indemnity because those claims "if preserved and matured, could cause a multiple claimant-inadequate fund situation to arise"); *see also Gorman v. Cerasia, 2 F.3d 519, 525* (3d Cir.1993) (noting that "all courts have recognized that a multiple claimant situation exists where a third party seeking indemnity or contribution also requests attorneys' fees and costs associated with its claim"). Codefendant cross-claims for indemnity and contribution are liabilities that must be addressed in order to protect the shipowner's rights under the Limitation Act. *See Gorman, 2 F.3d at 526-27, 528* (explaining how claims for indemnity and contribution, as well as claims for attorneys' fees, can frustrate a shipowner's right to limitation). Therefore, parties seeking indemnification and contribution from a shipowner must be considered claimants within the meaning of the Limitation Act.

As we have previously held, in order to proceed in state court, *all claimants* must sign the stipulation protecting the shipowner's rights under the Limitation Act. *In re Complaint of Port Arthur Towing, Co., 42 F.3d at 316.* This rule is a prudent attempt to balance the inherent conflict between the Limitation Act and saving to suitors clause. Although the claimants' interest in litigating in the forum of their choice is substantial, we will accede to that choice only "*if* it is accompanied by stipulations fully protecting

Odeco's right to limit liability and agreeing to abide by an admiralty court determination of the right to limit." *Odeco I, 4 F.3d at 405.* The shipowner's right to limitation takes precedence over the claimant's rights to proceed in the forum of their choice.

Faced with Shell's and Whittaker Corporation's unwillingness to sign a stipulation, the district court made a valiant effort to both protect Odeco's rights, and allow the injured claimants to proceed in state court. The injured claimants, however, have only partial control over Odeco's potential liabilities. The amount of Odeco's liability to Shell is governed not only by the amount the injured claimants recover, but also by an agreement between the defendants which specifies how liability, defense costs, and other losses will be shared. In addition, the record indicates that Whittaker Corporation may seek indemnification from Odeco for its defense costs. We are not in a position to predict the possible developments in the state court proceedings. Given, for example, the differing applications of state indemnity law, and the possible differing interpretations of indemnification and contribution agreements, we cannot be certain that the Second Amended Stipulation, signed solely by the injured claimants, will fully protect Odeco's limitation rights. Without such certainty, the federal forum must remain the sole forum for adjudicating the claims against Odeco. *See Odeco I, 4 F.3d at 405 n. 7* (explaining that *Pershing Auto Rentals, Inc. v. Gaffney, 279 F.2d 546* (5th Cir.1960), mandates that the federal forum remain the sole forum unless all claimants stipulate as to the shipowner's right to limitation). Accordingly, we hold that the district court abused its discretion in allowing the

state court action to proceed in the absence of a stipulation, agreed to by all claimants, protecting Odeco's right to limitation.[7]

III

We VACATE the district court's order partially lifting the stay of the Texas state court proceedings and REMAND for further proceedings consistent with this opinion.

---

[7] Odeco also argues that in order for a stipulation to adequately protect a shipowner's rights, it must recognize a shipowner's right to seek "exoneration" in federal court. Exoneration is not mentioned in the Limitation Act, but the Supplemental Rules for Certain Admiralty and Maritime Claims states that a complaint seeking limitation may also demand exoneration. *See* Supplemental Rules for Certain Admiralty and Maritime Claims F(1) ("The complaint may demand exoneration from as well as limitation of liability."). Although we have noted that "shipowners routinely seek exoneration and limitation of liability in the alternative," *Texaco, Inc., 47 F.3d at 769*, we have never held that exoneration is a necessary element in every stipulation. Having determined that the stipulation, as written, inadequately protects Odeco's rights to limitation, we need not decide whether exoneration is a necessary element of an adequate stipulation. The district court declined to include exoneration in the stipulation, and made no explicit findings concerning Odeco's desire to seek it. Accordingly, we leave this question to a subsequent case where the issue is more squarely presented.

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 95-30041

ODECO OIL AND GAS COMPANY, Drilling Division; ODECO DRILLING SERVICES, INC

Plaintiffs-Appellants

v.

DAVID J BONNETTE; JUAN M PORRAS; OTTIS L ROBBINS; HENRY BRUMFIELD; JOEL THOMPSON;

Defendants-Appellees

SHELL OIL COMPANY; SHELL OFFSHORE INC

Movants-Appellees

and

LIVERPOOL & LONDON P & I CLUB; LOUIS A GERDES, JR;

Intervenors

WHITTAKER CORPORATION

Claimant

ODECO OIL AND GAS COMPANY, Drilling Division; ODECO DRILLING SERVICES, INC

Plaintiffs-Appellants

v.

DAVID J BONNETTE; JUAN M PORRAS; OTTIS L ROBBINS; HENRY BRUMFIELD; JOEL THOMPSON;

Defendants-Appellees

SHELL OIL COMPANY; SHELL OFFSHORE INC

Movants-Appellees

and

LIVERPOOL & LONDON P & I CLUB; LOUIS A GERDES, JR;

Intervenors

WHITTAKER CORPORATION

Claimant

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans

---

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion 2/14/96, 5 Cir., ___, ___ F.3d ___)

(Filed Mar. 21, 1996)

Before WIENER, EMILIO M. GARZA, and BENAVIDES, Circuit Judges.

PER CURIAM:

(✔) The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FRAP and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) The Petition for Rehearing is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor, (FRAP

and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor, Rehearing En Banc is DENIED.

/s/ Emilio M. Garza
United States Circuit Judge

Judges WISDOM, DAVIS, and JONES did not participate in the consideration of the suggestion for rehearing en banc.

APPENDIX F

UNITED STATES CODE ANNOTATED
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART IV – JURISDICTION AND VENUE
CHAPTER 85 – DISTRICT COURTS; JURISDICTION

Current through P.L. 104-98, approved 1-16-96

Sec. 1333. Admiralty, maritime and price cases

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

(2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

---

46 U.S.C.

§ 183. Amount of liability; loss of life or bodily injury; privity imputed to owner; "seagoing vessel"

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases

provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) of this section is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $60 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage; *Provided,* That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) As used in subsections (b), (c), (d), and (e) of this section and in section 183b of this title, the term "seagoing vessel" shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 188 of this title. R.S. § 4283; Aug. 29, 1935, c. 804, § 1, 49 Stat. 960; June 5, 1936, c. 521, § 1, 49 Stat. 1479.

---

46 U.S.C.

§ 185. Petition for limitation of liability; deposit of value of interest in court; transfer of interest to trustee

The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to a trustee to be appointed by the court

his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease. R.S. § 4285; June 5, 1936, c. 521, § 3, 49 Stat. 1480.

Federal Rules of Civil Procedure

Rule F. Limitation of Liability.

(1) TIME FOR FILING COMPLAINT: SECURITY. Not later than six months after receipt of a claim in writing, any vessel owner may file a complaint in the appropriate district court, as provided in subdivision (9) of this rule, for limitation of liability pursuant to statute. The owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the owner's interest in the vessel and pending freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended; or (b) at the owner's option shall transfer to a trustee to be appointed by the court, for the benefit of claimants, the owner's interest in the vessel and pending freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended. The plaintiff shall also give security for costs

and, if the plaintiff elects to give security, for interest at the rate of 6 per cent per annum from the date of the security.

(2) COMPLAINT. The complaint shall set forth the facts on the basis of which the right to limit liability is asserted, and all facts necessary to enable the court to determine the amount to which the owner's liability shall be limited. The complaint may demand exoneration from as well as limitation of liability. It shall state the voyage, if any, on which the demands sought to be limited arose, with the date and place of its termination; the amount of all demands including all unsatisfied liens or claims of lien, in contract or in tort or otherwise, arising on that voyage, so far as known to the plaintiff, and what actions and proceedings, if any, are pending thereon; whether the vessel was damaged, lost, or abandoned, and, if so, when and where; the value of the vessel at the close of the voyage or, in case of wreck, the value of her wreckage, strippings, or proceeds, if any, and where and in whose possession they are; and the amount of any pending freight recovered or recoverable. If the plaintiff elects to transfer the plaintiff's interest in the vessel to a trustee, the complaint must further show any prior paramount liens thereon, and what voyages or trips, if any, she has made since the voyage or trip on which the claims sought to be limited arose, and any existing liens arising upon any such subsequent voyage or trip, with the amounts and causes thereof, and the names and addresses of the lienors, so far as known; and whether the vessel sustained any injury upon or by reason of such subsequent voyage or trip.

(3) CLAIMS AGAINST OWNER; INJUNCTION. Upon compliance by the owner with the requirements of subdivision (1) of this rule all claims and proceedings against the owner or the owner's property with respect to the matter in question shall cease. On application of the plaintiff the court shall enjoin the further prosecution of any action or proceeding against the plaintiff or the plaintiff's property with respect to any claim subject to limitation in the action.

(4) NOTICE TO CLAIMANTS. Upon the owner's compliance with subdivision (1) of this rule the court shall issue a notice to all persons asserting claims with respect to which the complaint seeks limitation, admonishing them to file their respective claims with the clerk of the court and to serve on the attorneys for the plaintiff a copy thereof on or before a date to be named in the notice. The date so fixed shall not be less than 30 days after issuance of the notice. For cause shown, the court may enlarge the time within which claims may be filed. The notice shall be published in such newspaper or newspapers as the court may direct once a week for four successive weeks prior to the date fixed for the filing of claims. The plaintiff not later than the day of second publication shall also mail a copy of the notice to every person known to have made any claim against the vessel or the plaintiff arising out of the voyage or trip on which the claims sought to be limited arose. In cases involving death a copy of such notice shall be mailed to the decedent at the decedent's last known address, and also to any person who shall be known to have made any claim on account of such death.

(5) CLAIMS AND ANSWER. Claims shall be filed and served on or before the date specified in the notice provided for in subdivision (4) of this rule. Each claim shall specify the facts upon which the claimant relies in support of the claim, the items thereof, and the dates on which the same accrued. If a claimant desires to contest either the right to exoneration from or the right to limitation of liability the claimant shall file and serve an answer to the complaint unless the claim has included an answer.

(6) INFORMATION TO BE GIVEN CLAIMANTS. Within 30 days after the date specified in the notice for filing claims, or within such time as the court thereafter may allow, the plaintiff shall mail to the attorney for each claimant (or if the claimant has no attorney to the claimant) a list setting forth (a) the name of each claimant, (b) the name and address of the claimant's attorney (if the claimant is known to have one), (c) the nature of the claim, i.e, whether property loss, property damage, death, personal injury, etc., and (d) the amount thereof.

(7) INSUFFICIENCY OF FUND OR SECURITY. Any claimant may by motion demand that the funds deposited in court or the security given by the plaintiff be increased on the ground that they are less than the value of the plaintiff's interest in the vessel and pending freight. Thereupon the court shall cause due appraisement to be made of the value of the plaintiff's interest in the vessel and pending freight; and if the court finds that the deposit or security is either insufficient or excessive it shall order its increase or reduction. In like manner any claimant may demand that the deposit or security be increased on the ground that it is insufficient to carry out the provisions of the statutes relating to claims in respect of loss of life or

bodily injury; and, after notice and hearing, the court may similarly order that the deposit or security be increased or reduced.

(8) OBJECTIONS TO CLAIMS: DISTRIBUTION OF FUND. Any interested party may question or controvert any claim without filing an objection thereto. Upon determination of liability the fund deposited or secured, or the proceeds of the vessel and pending freight, shall be divided pro rata, subject to all relevant provisions of law, among the several claimants in proportion to the amounts of their respective claims, duly proved, saving, however, to all parties any priority to which they may be legally entitled.

(9) VENUE: TRANSFER. The complaint shall be filed in any district in which the vessel has been attached or arrested to answer for any claim with respect to which the plaintiff seeks to limit liability; or, if the vessel has not been attached or arrested, then in any district in which the owner has been sued with respect to any such claim. When the vessel has not been attached or arrested to answer the matters aforesaid, and suit has not been commenced against the owner, the proceedings may be had in the district in which the vessel may be, but if the vessel is not within any district and no suit has been commenced in any district, then the complaint may be filed in any district. For the convenience of parties and witnesses, in the interest of justice, the court may transfer the action to any district; if venue is wrongly laid the court shall dismiss or, if it be in the interest of justice, transfer the action to any district in which it could have been brought. If the vessel shall have been sold, the proceeds shall represent the vessel for the purposes of these rules.